

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.572 OF 2017

IN

APPEAL NO.112 OF 2017

IN

NOTICE OF MOTION NO.2184 OF 2012

IN

SUIT NO.604 OF 2007

ALONG WITH

NOTICE OF MOTION NO.466 OF 2017

Mahendra P Dholakia : Applicant (Orig.Appellant)

In the matter between

Mahendra P Dholakia : Appellant

versus

Mohan K Kriplani and ors. : Respondents.

Ms. Ankita Singhania a/w Mr. K H Halai i/by M/s. Halai & Co. for the Applicant/Appellant.

Mr. Nitin Thakkar, Senior Advocate a/w Mr. A S Pal i/by Ms.Purnima Singh for the Respondent No.5.

Ms. Shalani Shankar for the Respondent Nos.1 and 2.

Ms. Pooja Yadav i/by Mr. G B Yadav for the Respondent Nos.3 and 4.

**CORAM : R. M. SAVANT &
SARANG V KOTWAL, JJ.**

DATE : 02nd November 2017

P.C.

1 The above Notice of Motion has been filed for condonation of delay of 1482 days in filing the above Appeal. The question which arises is whether the above Notice of Motion is required to be entertained by this Court. By virtue of the amendment carried out to Section 3 of the Bombay City Civil Court Act, 1948, the pecuniary jurisdiction of the Bombay City Civil Court has

been increased to suits having valuation of up to Rs.One Crore. A Notification dated 28/08/2012 came to be issued by the State Government fixing the appointed date for coming into force of the said provisions which in so far as Section 3 is concerned is 01/04/2012 and Section 4 is 01/10/2012. The Prothonotary and Senior Master of this Court issued a Notice dated 28/08/2012, by which it was informed that the suits pending in this Court as on 30/09/2012 shall stand transferred to the Bombay City Civil Court. A further notice dated 18/09/2012 came to be issued by the learned Prothonotary and Senior Master of this Court by which it was informed that a detailed list of such suits is being displayed on the official website of the High Court.

2 The filing of the above Appeal is sought to be justified on the ground that against the order de-exhibiting a document passed by a learned Single Judge of this Court, a Notice of Motion being No.2432 of 2012 was filed for recall the said order of de-exhibiting the document and in the alternatively for review of the said order, which Notice of Motion was entertained by a learned Single Judge of this Court and ultimately came to be withdrawn by the Applicant/Appellant with liberty to file appropriate proceedings. The order de-exhibiting the document was passed on 27/09/2012 that is the contemporaneous time when the suits covered by the amended Section 3 were being transferred to the Bombay City Civil Court. It is therefore not possible to

accede to the request of the learned counsel for the Appellant that this Court exercise jurisdiction and entertain the above Appeal which is filed in the year 2017, long after the amendment to the Bombay City Civil Court Act has come into force.

3 There can be no dispute about the fact that the above suit stands transferred to the Bombay City Civil Court as it is covered by the said amended provisions of Section 3 of the Bombay City Civil Court Act. In our view, since the suit in question stands transferred to the Bombay City Civil Court by virtue of the pecuniary jurisdiction of the Bombay City Civil Court having been increased, it is not possible to entertain the above Notice of Motion and consequently the Appeal. In the teeth of the amendment to Section 3 and the notification dated 28/08/2012, a situation where two Courts exercise parallel jurisdiction cannot be envisaged. It is therefore open for the Applicant/Appellant to file appropriate proceedings in the Bombay City Civil Court if so advised. Needless to state that the Notice of Motion as well as the Appeal are not considered on merits and it would be open for the parties to urge such contentions as are available to them in law in the proceedings that would be filed in the Bombay City Civil Court. The above Notice of Motion No.572 of 2017 is accordingly disposed of.

4 In view of the disposal of the above Notice of Motion No.572 of

2017, The above Appeal No.112 of 2017 as also the Notice of Motion No.466 of 2017 filed by the Applicant/Appellant for staying the effect of the orders dated 27/09/2012, 05/10/2012 and 15/10/2012 does not survive and the same to accordingly stand disposed of as such.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]